



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable George H. Sheppard  
Comptroller of Public Accounts  
Austin, Texas

Dear Sir:

Opinion No. 0-1444  
Re: Will an operator dealing  
in paint and wall paper  
who handles such items  
as artists supplies, etc.,  
show card supplies, etc.,  
be liable for the chain  
store tax.

We are in receipt of your letter of September 13,  
1939, in which you request the opinion of this department  
in response to the following question:

"Will an operator dealing in  
paint and wall paper, who also  
handles such items as artists sup-  
plies consisting of oil paints,  
easels, paper and canvas, brushes  
and artists boxes composed of paint  
and brushes; also, show card sup-  
plies as cards, paper for show  
cards, paints, brushes, pens, speed  
balls, glazed paper for show cards  
and artists, glue for work on fur-  
niture and decal decorations, be  
liable for the store tax?"

Opinion No. 0-40, dated January 9, 1939, and ad-  
dressed to Mr. W. B. Lane, Special County Auditor, Carrizo  
Springs, Texas, considered a proposition very similar to  
the one which you have submitted in your letter. In that  
case an opinion was requested as to whether or not a store  
selling approximately 65% of its gross receipts in retail  
lumber and building materials would be subject to the chain  
store tax. In that opinion the same statutory exemption  
from the payment of the tax which you submit in your letter  
was considered.

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Section 5 of Article 1111d of the Penal Code provides for the exemption from the tax by "wholesale and/or retail lumber and building material businesses engaged exclusively in the sale of lumber and building material."

Opinion No. 0-40, a copy of which is hereto attached, discusses the authorities and holds that before a place would come within the exemption it must be engaged exclusively in the sale of lumber and building material. It would make no difference if the large majority, or in fact nearly all, of the products sold were lumber and building material. The use of the word "exclusively" requires that such places to be exempt shall handle nothing but lumber and building material.

It is evident from the question submitted in your letter that by no stroke of imagination could many of the items sold by this operator be classified as lumber and building material. It is the opinion of this department, therefore, that said operator would not be exempt from the payment of the chain store tax.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Billy Goldberg*  
Billy Goldberg  
Assistant

EG:FC

APPROVED SEP 20, 1939

*Ronald Mann*

ATTORNEY GENERAL OF TEXAS

